SUPREME COURT OF THE UNITED STATES.

No. 114.

DECEMBER TERM, 1867.

THE UNITED STATES vs. JULIAN ALIRE.

Appeal from the Court of Claims.

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vs.
JULIAN ALIRE.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

The record in this case is made up of the petition of the claimant, the motion by the solicitor for the United States to dismiss for want of jurisdiction and because the facts stated in the petition constituted no sufficient cause of action, the decree of the court, the application for, and the allowance of, an appeal.

The petition was filed in 1861. At that time the Court of Claims rendered no judgments but reported their opinions to Congress, with the form of a bill in each case, which if enacted would carry the opinion into effect.

The petition alleges that the petitioner, in conformity with the acts of Congress relating to bounty lands, dated 3d of March, 1855, and 14th of May, 1856, made application to the Commissioner of Pensions for one hundred and sixty acres of bounty land, and submitted proof to sustain the application; that said application for bounty land was based upon the fifth section of the act of May 14, 1856, and the third section of the act of third of March, 1855, for service in battle on the 18th day of May, 1855, and that the said application, after being fully examined by the Commissioner of Pensions was by him rejected; that an appeal from the decision of the Commissioner was taken to the Secretary of the Interior, and that on the 6th day of April, 1859,

the Secretary of the Interior, having fully considered said appeal, affirmed the decision of the Commissioner of Pensions rejecting the claim of the petitioner.

Thereupon the petitioner asked that the Court of Claims should report a bill to Congress for his relief, the said bill to direct the Commissioner of Pensions to issue to the petitioner a bounty land-warrant for one hundred and sixty acres of land on his said application and the proof then on file in the office of the Commissioner of Pensions.

The motion to dismiss was overruled, (Record, p. 3.) and the following decree entered at the January term of the Court of Claims, 1866:

And now, to wit, 5th April, A. D. 1866, this cause having heretofore been heard and considered by the court, it is now further considered, adjudged, and decreed by the said court, before the judges thereof now here, that the said Julian Alire, the claimant, is entitled to have and recover, of and from the United States one military bounty land-warrant for one hundred and sixty acres of land for services rendered by him, the said Julian Alire, as a volunteer in the military service of the United States in an Indian war, in the year A. D. 1856; and the said warrant is, by the court now here, adjudged and decreed to him, the said Julian Alire; and it is also further adjudged and decreed by the said court, that the said military bounty land-warrant be made, issued, and delivered to the said Julian Alire by the proper officer. It is further ordered that this decree be certified by the clerk of Court of Claims, under the seal thereof, and remitted to the Secretary of the Department of the Interior.

The act under which the petitioner claims provides that proof shall be submitted to the Commissioner of Pensions that the claimant is entitled to the certificate or warrant, under such rules and regulations as he may prescribe.—(See Brightly's Digest, sec. 20, p. 99, and 1 Statutes at Large, 8, sec. 3.)

It is manifest that his duties are not merely ministerial, but partake of a judicial character.

The decree of the Court of Claims commands the Secretary of the Interior to make, issue, and deliver a bounty land-warrant to Julian Alire, the claimant in the court below. It is insisted that this decree, being in the nature of a mandamus, is void, the Court of Claims having no authority to make such an order.

The act of March 3, 1863, giving to the Court of Claims the jurisdiction of a court, provides for only one class of judgments, which are to be paid in money upon presentation to the Secretary of the Treasury.

If this were a proper case for a mandamus, application should have been made to the Supreme Court for the District of Columbia, and not to the Court of Claims.

The court not only had no authority to issue an order directed to the Secretary of the Interior, but the record does not show that it was ever prayed for by the petitioner. The prayer of his petition is, that the court shall frame a bill to be enacted by Congress directing the Commissioner of Pensions to issue a bounty land-warrant.

In the case of the United States *vs.* The Commissioner, 5 Wallace, 565, this court refused to issue a mandamus, on the ground that the

issuing of the patent in that case involved judgment and discretion that could not be contested by the writ.

"The only acts to which the power of the courts by mandamus extends are such as are purely ministerial, and with regard to which nothing like judgment or discretion, in the performance of its duties, is left to the officer; but that, whenever the right of judgment or decison exists in him, it is he and not the courts who can regulate its exercise."—United States *vs.* Guthrie, 17 Howard, 304.

The Supreme Court, in the case of Marbury *vs.* Madison, clearly defined the facts and circumstances which alone would warrant a mandamus. The doctrine of that case has been reaffirmed in a series of decisions by this court.

It may now be regarded as an axiom that, when the act to be done involves the exercise of discretion or judgment in determining whether the duty exists, it is a judicial and not a ministerial act.

It will be maintained by the appellee that the Court of Claims has jurisdiction in this case, because the claim is founded upon a law of Congress, and that the court has jurisdiction in such cases.

It is a sufficient answer to this proposition, that in this case the law has designated the officer to whom the evidence, upon which the decision of the application is made, is to be submitted; that there is no appeal from his decision to the Court of Claims provided for; that if the Court of Claims assumes jurisdiction, its decision will have no legal sanction, and cannot be, whatever that court may choose to denominate it, one of those judgments or decrees from which the Supreme Court of the United States will entertain an appeal.

It could not have been intended to place the whole executive government of the United States under the review of the Court of Claims.

The statute which creates the Court of Claims provides for a moneyed judgment against the United States; and when that judgment is properly certified, it is paid by the Secretary of the Treasury. But the certificate of an opinion of the Court of Claims, in a case which involves a question as to the performance of a duty by an executive officer, must be regarded by the officer to whom it is directed as the mere expression of an opinion, which, however much respected on account of the learning and high char[illegible] tribunal from [illegible] it emanates, has nothing of the power which attends a judicial decree.

But if the Court of Claims has jurisdiction, the appellee has not made out a case. The act of March 3, 1855, under which he claims, provides for a bounty where the military service had been rendered "in any of the wars in which this country has been engaged since 1790." The military service is alleged in the petition to have been on the 18th day of May, 1855. But it is claimed that the fifth section of the act of May, 1856, (11 Statutes, 8,) to which reference has been made, includes the period when the miltary service was rendered. The language of the section is as follows: "That the provisions of said act shall extend to all persons who have served as volunteers with the armed forces of the United States, subject to military orders, for the space of fourteen days, in any of the wars

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specified in the first section of said act, whether such persons were or not mustered into the service of the United States."

It is contended that this section does not include any war that was not contemplated by the act of March 3, 1855.

This section applies only to those who have served fourteen days. It is not alleged by the appellee in his petition that he served fourteen days, but his claim rests on his service in battle on the 18th day of May, 1855.

The exception made in favor of those who served in battle, by the third section of the act of March 3, 1855, cannot apply. The language of the fifth section of the act of May 14, 1856, upon which the appellee rest his case, is explicit. Fourteen days' service are required from all who claim under that section.

E. P. NORTON,
Solicitor for the United States.

IN

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1867.

No. 114.

The United States

VS.

JULIAN ALIRE, Defendant in Error

APPEAL FROM COURT OF CLAIMS.

Brief for Defendant in Error,

BY

HUGHES, DENVER & PECK AND J. J. WATTS.

WASHINGTON, D. C.
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1868.

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THE UNITED STATES, *Appellants*,
vs.
JULIAN ALIRE, *Defendant in Error.*
} Appeal from Court of Claims.

Brief for Defendant in Error.

FACTS OF THE CASE.

Julian Alire, the defendant in error, on the 18th day of June, 1857, applied to the Commissioner of Pensions for one hundred and sixty acres of bounty land, under the 1st and 3d sections of the act of Congress of March 3, 1855. See Statutes at Large, vol. 10, page 701, and under the amendatory act of 14th May, 1856, section 5th. See Statutes at Large, vol. 11, page 8. This claim was, on the 15th day of September, 1857, rejected by the Commissioner of Pensions. February 15, 1859, an appeal was taken from the decision of the Commissioner of Pensions to the Secretary of the Interior. On the 6th of April, 1859, the Secretary of the Interior affirmed the decision of the Commissioner of Pensions rejecting the claim for bounty land. January 28, 1861, application was made to the Secretary of the Interior for a rehearing of the case and its reference to the Attorney General for his opinion as to the proper construction of the acts of Congress under which the claim arose. February 21, 1861, the application for reference of the question of construction to the Attorney General was denied. February 21, 1861, suit was brought in the Court of Claims by Julian Alire against the United States. At the October term, 1865, in the Court of Claims, motion to dismiss the case was made by the United States for the reasons:

1st. It has no jurisdiction of the cause of action, if any, set forth in the petition.

2d. It has no power or authority to grant the relief prayed for, nor any relief to the claimant.

3d. The facts stated in the petition constitute no sufficient cause of action upon which this Court can act.

The Court of Claims, after duly considering this motion to dismiss for said reasons, on the 8th of January, 1866, overruled said motion to dismiss. The case was subsequently submitted on its merits, and on the 5th of April, 1866, a decree was made by the Court of Claims awarding to Julian Alire one military bounty land warrant for one hundred and sixty acres of land, to be issued to him by the proper officer. On the 25th day of April, 1866, a petition was submitted in the Court of Claims by the Solicitor of the United States Court of Claims, asking for an appeal to the Supreme Court, and on the 21st day of June, 1866, the appeal was allowed, and the case now stands in the Supreme Court for review.

BRIEF.

PROPOSITION FIRST.

Whether the Court of Claims had jurisdiction or not, must be determined by an examination of the acts of Congress establishing said court and defining its jurisdiction. By reference to the 1st section of the Act of Congress approved February 24, 1855, Vol. 10, Statutes at Large, p. 612, it will be seen that jurisdiction was expressly given where the claim was founded upon a law of Congress. Now by reference to the petition in this record filed in the Court of Claims, it will be seen that this particular claim is founded entirely upon the Act of Congress of 3d of March, 1855, and 14th May, 1856, and hence jurisdiction of the claim is expressly given, and the action of the Court of Claims in overruling the motion to dismiss, was not erroneous, but right and proper.

PROPOSITION SECOND.

As none of the facts proved before the Court of Claims has been put into this record, the presumption is, that every just requisite to entitle the claimant to a Bounty Land Warrant was duly proved, if by law the claimant has a right to bounty land, as set forth in his petition in the Court of Claims.

PROPOSITION THIRD.

The facts set forth in the petition in the Court of Claims being admitted to be true, the question and the only question worth while to consider is this: Does the Act of 3d of March, 1855, and amendatory act of 14th May, 1856, under which the claim is made, entitle the claimant to bounty land, upon a fair construction of the words and spirit and intent of said acts. The 5th section of the act of May 14, 1856, is as follows:

"That the provisions of said act (meaning 3d of March, 1855,) shall extend to all persons who have served as volunteers with the armed forces of the United States, subject to military orders for the space of fourteen days in any of the wars specified in the first section of said act, whether such persons were or were not mustered into the service of the United States." Section 3d of the act of 3d of March, 1855, makes being engaged in battle equivalent to a service of fourteen days. It is an admitted fact in this case, that the application is in due form under the law, and the proof complete and satisfactory. The claim was rejected by the Commissioner of Pensions, and the rejection sustained by the Secretary of the Interior, upon the ground that by law the claimant under said acts to entitle him to bounty land, must prove not only that he served in one of the wars specified in the 1st section of the act of 3d March, 1855, mentioned, but that his service in that war was prior to that date. It is contended for the claimant in this case, that if the war existed prior to the 3d of March, 1855, and the service was rendered in that war so existing, that it was not required—not incumbent upon the applicant to show that his service in that war was prior to the 3d of March, 1855, but that service at any time in a war existing prior to 3d March, 1855, entitles him to bounty land if his service was prior to 14th May, 1856, as that act gives him his right to bounty land. If the service took place anterior to 14th May, 1856, and in a war existing anterior to 3d March, 1855, it does not matter at what date the service was performed in that war. The act of 14th May, 1856, took effect from the date of its passage and approval, and the words "have served" must be construed to mean, have served at any time prior to the date of said act. It is necessary to show that the war existed before the 3d of March, 1855, for the 5th section says "in any of the wars specified in the first section of said act," but it

does not say when the service must have been rendered in said war. The claimant has shown in this case all that the 5th section of the act under which he claims, requires of him:

1st. That he was a volunteer.

2d. That he served with the armed forces of the United States, subject to military orders.

3d. That he was in actual battle before the passage of said act.

4th. That his service was in one of the wars in the 1st section of the act of 3d of March, 1855, mentioned.

But the Secretary of the Interior says the claimant shall not have bounty land unless he proves something which the law does not require, which is, that his service also took place before the 3d of March, 1855. The Secretary of the Interior is not satisfied to administer the law as it is, but in order to defeat the right of the claimant to bounty land, legislates into the Act of Congress a proviso which Congress did not see fit to put there: "Provided said service is proved to have been rendered before the 3d of March, 1855."

Had Congress desired or designed to have such a proviso in the 5th section of the act of 14th May, 1856, it would have been placed there when the act was passed; as Congress did not see fit to put upon the 5th section of the act of 14th May, 1856, any such proviso, it is without the scope of the ministerial duties of the Secretary of the Interior to do so. In the execution of the bounty land laws, the duties of the Secretary of the Interior are ministerial, not legislative. The object of these acts was to give bounty land for service in certain cases, and *en passant* to the loss of life in battle, no matter at what particular date in said wars the service was rendered, whether at the beginning, the middle, or the end of the war. The construction of the Secretary of the Interior would give to one man in battle on the 2d of March, 1855, bounty land, and refuse it to his neighbor, who was in battle on the 4th of March, 1855, two days after, the service of both being in the same war. Such would not be a liberal construction of the law designed to carry out its spirit and intent, but a strict construction intended to defeat the plain intention of the law. If the applicant for bounty land under the 5th section of the act of 14th May, 1856, has to bring himself within all the provisions of the act of 3d of March, 1855, then the amendatory act amounts to nothing, and might just

as well not have been passed. The question seems too plain for argument. The construction contended for by the Secretary of the Interior is against the spirit and intent, and against the express language of the statutes; it is against justice and right. The Court of Claims had jurisdiction, as has been above shown, and their judgment was proper, right and just, and ought to be affirmed by the Supreme Court.

HUGHES, DENVER & PECK,
J. J. WATTS,
Attorneys for Defendant in Error.